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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 18, 1998

PETITION OF

E.I. DU PONT DE NEMOURS AND
COMPANY, CONOCO INC.
AND AEP RESOURCES, INC.

CASE NO. PUE980232

For declaratory order

ORDER FOR DOCKETING AND NOTICE

On April 24, 1998, E.I. du Pont de Nemours and Company ("Du Pont"), Conoco, Inc. ("Conoco") and AEP Resources, Inc. ("Resources") (collectively "Petitioners") petitioned the Commission for a declaratory order as provided by Rule 5:3 of the Commission's Rules of Practice and Procedure ("Commission's Rules"), 5 VAC 5-10-290. Du Pont, Conoco and Resources petitioned the Commission to declare that the making and performance of certain agreements will not cause Du Pont, Conoco or Resources, or any of the organizations formed by them, or any combination of them, to be public utilities under Virginia law.

Under Rule 5:3 of the Commission's Rules, a declaratory judgment is available only to persons "having no other adequate remedy". Moreover, § 8.01-184 of the 1950 Code of Virginia (Repl. Vol. 1992), as amended, and the case law interpreting § 8.01-184 make clear that the power to render a declaratory

judgment is a discretionary power to be exercised with care and caution and that an actual controversy must exist between the parties, based upon actual antagonistic assertion and denial of right, before an application for declaratory judgment can be adjudicated.

NOW UPON CONSIDERATION of the petition, the Commission is of the opinion that the petition should be docketed; that the Applicant should give notice of its petition to all Virginia jurisdictional utilities, the Attorney General, the City of Waynesboro, and the City of Richmond; that interested persons should have an opportunity to move to intervene and to file answers to the petition. We shall also authorize our Staff to file an answer.

The Commission further finds that the petitioner should file with the Commission a memorandum of legal authority which explains in detail the legal basis for the Commission's ability to issue a declaratory order in this matter.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE980232.
- (2) On or before May 22, 1988, petitioners shall serve true copies of this order and its petition for declaratory order on the Attorney General and the Cities of Waynesboro and Richmond by delivery thereof or by depositing the same in the U.S. mail properly addressed and stamped.

(3) On or before May 22, 1998, petitioners shall serve true copies of this order and its petition for declaratory order on an officer or the registered agent of all Virginia jurisdictional utilities by delivery thereof or by depositing same in the U.S. mail properly addressed and stamped.

(4) On or before May 29, 1998, petitioners shall file a certificate of the service ordered in paragraphs (2) and (3) above, including the name, address, and date of the person served, with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218.

(5) On or before June 8, 1998, any interested person may move to intervene in this proceeding as provided by Rule 5:3, 5 VAC 5-10-290, by filing a motion with the Clerk of the Commission at the address in paragraph (4) above and by serving a copy on counsel for petitioners, Anthony Gambardella, Esquire, Woods, Rogers & Hazlegrove, 823 East Main Street, Suite 1200, Richmond, Virginia 23219.

(6) On or before June 8, 1998, any interested person which has moved to intervene and the Commission Staff may file an answer to the petition with the Clerk of the Commission at the address in paragraph (4) above and serve a copy on counsel.

(7) On or before June 1, 1998, petitioners shall file with the Commission a memorandum of legal authority that explains in detail the legal basis for the Commission's ability to issue a declaratory order in this petition.